

EXHIBIT 26

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Civil Action No. 16-cv-5845 (AJN)

5 -----x
6 DORRELIEN FELIX and MARGALY FELIX,
7 individually, and JONATHAN C. MOORE, as
8 Administrator of the Estate of DAVID FELIX,
9 Plaintiffs,

10
11 - against -
12

13 THE CITY OF NEW YORK, a municipal entity;
14 HAROLD CARTER and VINCENTE MATIAS,
15 individually and in their official capacities
16 as New York City Police Detectives; the BRIDGE
17 INC., a domestic not-for-profit organization;
18 and JANE DOE (as of yet unidentified employee
19 of the Bridge)
20 Defendants.

21 -----x

22 August 8, 2019

23 11:36 a.m.

(Continued.)
24
25

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3 C O N T I N U E D:</p> <p>4</p> <p>5 EXAMINATION BEFORE TRIAL of a Defendant,</p> <p>6 The City Of New York, By, THERESA TOBIN, pursuant</p> <p>7 to Notice, held at the offices of BELDOCK LEVINE</p> <p>8 & HOFFMAN, LLP, 99 Park Avenue, New York, New</p> <p>9 York 10016 before Mandy Fein, a Notary Public of</p> <p>10 the State of New York.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 STIPULATIONS</p> <p>3 IT IS HEREBY STIPULATED AND AGREED, by</p> <p>4 and among counsel for the respective parties</p> <p>5 hereto, that the filing, sealing and</p> <p>6 certification of the within deposition shall</p> <p>7 be and the same are hereby waived;</p> <p>8 IT IS FURTHER STIPULATED AND AGREED that</p> <p>9 all objections, except as to form of the</p> <p>10 question, shall be reversed to the time of the</p> <p>11 trial;</p> <p>12 IT IS FURTHER STIPULATED AND AGREED that</p> <p>13 the within deposition may be signed before any</p> <p>14 Notary Public with the same force and effect</p> <p>15 as if signed and sworn to before the Court.</p> <p>16 * * *</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 A P P E A R A N C E S :</p> <p>3</p> <p>4 BELDOCK LEVINE & HOFFMAN, LLP</p> <p>5 99 Park Avenue, 26th Floor</p> <p>6 New York, New York 10016</p> <p>7 Attorney for Plaintiffs</p> <p>8</p> <p>9 BY: JONATHAN C. MOORE, ESQ</p> <p>10 LUNA DROUBI, ESQ</p> <p>11</p> <p>12</p> <p>13 NEW YORK CITY LAW DEPARTMENT</p> <p>14 100 Church Street, 4th Floor</p> <p>15 New York, New York 10007</p> <p>16 Attorney for Defendants</p> <p>17</p> <p>18 BY: JOSHUA J. LAX, ESQ</p> <p>19</p> <p>20</p> <p>21 ALSO PRESENT</p> <p>22 PETER J. CALLAGHAN</p> <p>23 ROLAND WILEY</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 TOBIN</p> <p>2 THERESA TOBIN,</p> <p>3 called as a witness, having been first duly</p> <p>4 sworn, was examined and testified as follows:</p> <p>5 EXAMINATION BY</p> <p>6 MR. MOORE:</p> <p>7 Q Good morning, Chief Tobin.</p> <p>8 A Good morning.</p> <p>9 Q My name is Jonathan Moore. We met</p> <p>10 right before. You are here today in the case</p> <p>11 of Felix verse the City of New York, and you</p> <p>12 are testifying on behalf of the New York City</p> <p>13 Police Department concerning EDP.</p> <p>14 Do you understand that?</p> <p>15 A Yes.</p> <p>16 Q If for any reason you need to take a</p> <p>17 break, just let me know. If there is a</p> <p>18 question pending, I'd ask that you finish the</p> <p>19 answer before you take a break.</p> <p>20 A Sure.</p> <p>21 Q But if you need to take a break, that</p> <p>22 is perfectly fine. The only other couple of</p> <p>23 rules that we try to abide by in these</p> <p>24 depositions is that only one person should</p> <p>25 speak at a time, which we often don't do</p>

<p style="text-align: right;">Page 6</p> <p>1 TOBIN</p> <p>2 but -- it is human nature. To the extent</p> <p>3 possible, let me finish the question before</p> <p>4 you answer.</p> <p>5 Okay?</p> <p>6 A Sure.</p> <p>7 Q I will try not to interrupt you and</p> <p>8 hopefully you will try not to interrupt me.</p> <p>9 A Sure.</p> <p>10 Q The other thing is, the court</p> <p>11 reporter is only takes down audible answers.</p> <p>12 She can't take down nods of the head.</p> <p>13 A Right.</p> <p>14 Q So, all of your answers have to be</p> <p>15 audible.</p> <p>16 Do you understand that?</p> <p>17 A Yes.</p> <p>18 Q Most people then go uh-huh.</p> <p>19 So, what is your full name for the</p> <p>20 record?</p> <p>21 A Theresa, T-H-E-R-E-S-A C. Tobin,</p> <p>22 T-O-B-I-N.</p> <p>23 Q What year were you born?</p> <p>24 A 1961.</p> <p>25 MR. MOORE: I am not asking for date</p>	<p style="text-align: right;">Page 8</p> <p>1 TOBIN</p> <p>2 A Collaborative policing.</p> <p>3 Q Tell me what collaborative policing</p> <p>4 is.</p> <p>5 A We work with other City agencies and</p> <p>6 internally with the NYPD in collaborating on</p> <p>7 different policies that the NYPD has in terms</p> <p>8 of victims, in terms of the community, in</p> <p>9 terms of crime fighting.</p> <p>10 Q Who do you report to?</p> <p>11 A The police commissioner.</p> <p>12 Q So, you are in the police</p> <p>13 commissioner's office?</p> <p>14 A No, down the hall.</p> <p>15 Q Is there a deputy commissioner or a</p> <p>16 commissioner for collaborative policing?</p> <p>17 A There was. It has been vacant since</p> <p>18 the end of January.</p> <p>19 Q Who was that?</p> <p>20 A Suzanne Herman.</p> <p>21 Q She's no longer in the police</p> <p>22 department?</p> <p>23 A That's correct.</p> <p>24 Q How long have you been the commanding</p> <p>25 officer of collaborative policing?</p>
<p style="text-align: right;">Page 7</p> <p>1 TOBIN</p> <p>2 of birth.</p> <p>3 Q 1951?</p> <p>4 A '61.</p> <p>5 Q Sorry, I didn't mean to date you.</p> <p>6 Where are you currently employed?</p> <p>7 A The New York City Police Department.</p> <p>8 Q What is your rank?</p> <p>9 A Assistant chief.</p> <p>10 Q That is two stars, right?</p> <p>11 A Correct.</p> <p>12 Q What is your date of appointment to</p> <p>13 the police department?</p> <p>14 A July 25th, 1983.</p> <p>15 Q So, you're just -- just had your</p> <p>16 thirty-eighth, thirty-seventh anniversary?</p> <p>17 A Thirty-seventh, yes.</p> <p>18 Q Congratulations.</p> <p>19 A Thank you.</p> <p>20 Q I guess.</p> <p>21 So, what is your present assignment,</p> <p>22 Chief Tobin?</p> <p>23 A I'm the commanding officer of</p> <p>24 collaborative policing.</p> <p>25 Q Commanding officer of what?</p>	<p style="text-align: right;">Page 9</p> <p>1 TOBIN</p> <p>2 A Since March of 2014.</p> <p>3 Q If you can just briefly, going</p> <p>4 backwards, from March '14 tell me what your</p> <p>5 assignments were.</p> <p>6 A They -- that would take a while.</p> <p>7 Q You want to start from the beginning</p> <p>8 or --</p> <p>9 A I was on patrol. I have worked in</p> <p>10 various units, investigative patrol.</p> <p>11 Q Let me do it this way.</p> <p>12 How long were you a patrol officer, how</p> <p>13 many years?</p> <p>14 A Several, like the beginning of my</p> <p>15 career, worked in various precincts in Queens.</p> <p>16 Q When were you promoted to sergeant,</p> <p>17 do you know that was?</p> <p>18 A 1989.</p> <p>19 Q Did you continue to serve in the</p> <p>20 patrol function as a sergeant?</p> <p>21 A I did.</p> <p>22 Q How long did you do that in patrol?</p> <p>23 A I was promoted to lieutenant in 1998.</p> <p>24 Q Is it fair to say from 1989 to 1998</p> <p>25 you were a sergeant in the patrol division?</p>

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2 A No. I worked in the press office. I

3 had various assignments.

4 Q When did you last work in the patrol

5 division?

6 A 2002 as a captain, 2003.

7 Q So, you became a lieutenant in 1998,

8 correct?

9 A Yes.

10 Q What was your assignment upon

11 becoming a lieutenant?

12 A I worked in the press officer and was

13 editor of the Spring 3100 magazine.

14 Q What magazine?

15 A An internal department magazine.

16 Q What is it called?

17 A Spring 3100.

18 Q What does that mean, Spring 3100?

19 A So, you remember when you used to

20 have like you say Murray Hill 7, so Spring

21 S-P-R was the first if you wanted

22 headquarters, so it got the name Spring 3100

23 is the number people called when they needed

24 police assistance.

25 Q Good.

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1 TOBIN

2 And you were promoted to captain at some

3 point?

4 A I was in September of 2002.

5 Q What was your assignment upon being

6 promoted to captain?

7 A Patrol in Manhattan South.

8 Q How long did you serve in that

9 position?

10 A I was the XO in the 1st, the 10th and

11 the 13th Precincts and then I was brought into

12 work in personnel.

13 Q In the personnel division of the

14 police department?

15 A Correct.

16 Q When was that?

17 A I believe it was December or January

18 of 2004.

19 Q You say you were the XO on the 1st,

20 the 10th and the 13th?

21 A Precinct, correct.

22 Q What did you do in the personnel

23 division?

24 A I was the commanding officer of the

25 staff services section of the personnel

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2 borough.

3 Q What functions were performed by the

4 staff services section?

5 A Policy analysis and anything having

6 to do with applicant processing, the medical

7 division, recruitment and civilian employment.

8 Q How long did you -- how long did

9 you -- how long were you the CO of the staff

10 services section?

11 A From the time I got there until 2014

12 when I went to collaborative policing.

13 Q So, just so I understand, from 2004

14 until 2014, you were the CO of the staff

15 services section?

16 A Correct.

17 Q The personnel division, correct?

18 A Yes.

19 Q Did you ever hold any position in the

20 police academy?

21 A No.

22 Q Did you ever hold any position in any

23 training --

24 MR. MOORE: Withdraw that.

25 Q Did you ever -- were you ever

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2 involved in developing training with respect

3 to any activities in the police department?

4 A Yes.

5 Q What was that?

6 A I worked on the CI, crisis

7 intervention training, team training.

8 Q CIT training?

9 A Correct.

10 Q When did you start doing that?

11 A In January of 2015, approximately.

12 Q What did your responsibilities

13 involve in that with regard to that?

14 A Reviewing other jurisdiction's

15 curriculum, looking at the curriculum that the

16 NYPD had.

17 Q Anything else?

18 A Not that I can think of.

19 Q So, as of January 2015, tell me what

20 your highest level of education was.

21 A PHD.

22 Q When did you get your PHD?

23 A 2011.

24 Q From where?

25 A State University Of New York at

<p style="text-align: right;">Page 14</p> <p>1 TOBIN</p> <p>2 Albany.</p> <p>3 Q What was your PHD in?</p> <p>4 A Criminal justice.</p> <p>5 Q Do you have any kind of a more</p> <p>6 particular focus than that or --</p> <p>7 A No. That is the name of degree.</p> <p>8 Q What did you -- did you do a thesis?</p> <p>9 A I did.</p> <p>10 Q What was your thesis on?</p> <p>11 A Arming off-duty officers.</p> <p>12 Q Arming off-duty officers?</p> <p>13 A Yes.</p> <p>14 Q Did any of your academic studies</p> <p>15 involve the police department's dealing with,</p> <p>16 so called, emotionally disturbed persons?</p> <p>17 A No.</p> <p>18 Q So, in January of 2015 or</p> <p>19 thereabouts, you said you were assigned to</p> <p>20 work on developing a CIT training, correct?</p> <p>21 A Well, to look at other jurisdictions</p> <p>22 that had them, that had CIT training.</p> <p>23 Q So, you were looking at what other</p> <p>24 jurisdictions were doing, right?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 16</p> <p>1 TOBIN</p> <p>2 policies with respect to emotionally disturbed</p> <p>3 persons in the police department, it just was</p> <p>4 implementing a different approach to dealing</p> <p>5 with it?</p> <p>6 A Could you repeat that?</p> <p>7 Q Sure.</p> <p>8 Is it fair to say that the CIT training</p> <p>9 didn't implement a new approach --</p> <p>10 MR. MOORE: Withdrawn.</p> <p>11 Q Didn't implement new policies with</p> <p>12 respect to emotionally disturbed persons, that</p> <p>13 issue in the police department, it just</p> <p>14 changed the premise approach to it?</p> <p>15 A I think it supplemented what we --</p> <p>16 what we had, yeah.</p> <p>17 Q Was there any revision of the policy</p> <p>18 with respect to EDP's at any time when you</p> <p>19 started working on the CIT training?</p> <p>20 A No.</p> <p>21 Q Was there anything, any incident, any</p> <p>22 event in the City that you understood was the</p> <p>23 motivating force behind the change and</p> <p>24 approach in working with CIT training?</p> <p>25 A No.</p>
<p style="text-align: right;">Page 15</p> <p>1 TOBIN</p> <p>2 Q What was going on in the police</p> <p>3 department at that point in January of 2015</p> <p>4 with respect to CIT training?</p> <p>5 A Advocates of the -- in the field had</p> <p>6 requested that we consider doing CIT training</p> <p>7 with the NYPD, within the NYPD.</p> <p>8 Q Is that to replace the training with</p> <p>9 respect to emotionally disturbed persons or</p> <p>10 something in addition?</p> <p>11 A To supplement it.</p> <p>12 Q Can you describe for me the</p> <p>13 difference between the training for ADP's and</p> <p>14 CIT training, if there is any difference?</p> <p>15 A In the crisis intervention team</p> <p>16 training there is -- it's a much longer course</p> <p>17 than what officers receive as a matter of</p> <p>18 course in their training, and it breaks down</p> <p>19 different mental illnesses, tools that would</p> <p>20 be helpful in working with people with mental</p> <p>21 illness, as well as, developmental</p> <p>22 disabilities and then there is also a portion</p> <p>23 on self-care for officers.</p> <p>24 Q So, is it fair to say that the crisis</p> <p>25 intervention training didn't change the</p>	<p style="text-align: right;">Page 17</p> <p>1 TOBIN</p> <p>2 Q So, tell me a little bit more about</p> <p>3 what you were doing with respect to the CIT</p> <p>4 training.</p> <p>5 A So, we visited several cities, and</p> <p>6 when I say we, I am referring to our</p> <p>7 partnership with the department of mental</p> <p>8 health and mental hygiene, DOHMH, and we went</p> <p>9 to various cities and sat through, say, the</p> <p>10 Los Angeles Police Department's crisis</p> <p>11 intervention team training program, which was</p> <p>12 four days, and we looked at Houston and</p> <p>13 Arizona, some of the cities in Arizona and</p> <p>14 Rochester.</p> <p>15 Q Rochester, New York?</p> <p>16 A Yes. We didn't physically sit</p> <p>17 through Rochester, but we -- there was a</p> <p>18 person up there that was instrumental in New</p> <p>19 York State training.</p> <p>20 Q Who was that?</p> <p>21 A Dawn Kamen.</p> <p>22 Q Dawn Kamen?</p> <p>23 A Uh-huh.</p> <p>24 Q When you were developing the CIT</p> <p>25 training, were you working -- at that point</p>

<p style="text-align: right;">Page 18</p> <p>1 TOBIN</p> <p>2 what was the --</p> <p>3 MR. MOORE: Withdraw that.</p> <p>4 Q When you were first starting to work</p> <p>5 on the CIT training --</p> <p>6 MR. MOORE: Withdraw that.</p> <p>7 Q Other than visiting those</p> <p>8 jurisdictions and learning what they were</p> <p>9 doing, what else were you doing in terms of</p> <p>10 your involvement with the work on CIT</p> <p>11 training?</p> <p>12 A We met with professionals in the</p> <p>13 field, Amy Watson in Chicago, who had written</p> <p>14 several articles, as well as, Dr. Michael</p> <p>15 Compton, who had done a lot of work with CIT</p> <p>16 in Atlanta.</p> <p>17 Q What was the first name, Amy?</p> <p>18 A Watson.</p> <p>19 Q And what was the purpose of meeting</p> <p>20 with them?</p> <p>21 A To see if it -- if they believe</p> <p>22 through their research that it was a worth</p> <p>23 while venture.</p> <p>24 Q Other than the visiting of the</p> <p>25 jurisdictions and meeting with other people,</p>	<p style="text-align: right;">Page 20</p> <p>1 TOBIN</p> <p>2 A Yes.</p> <p>3 Q -- New York Police Department, right?</p> <p>4 A Yes.</p> <p>5 Q At the time, who was the head of the</p> <p>6 training when you were looking at the CIT</p> <p>7 stuff?</p> <p>8 A I believe it was Benjamin Tucker.</p> <p>9 Q So, he was the head of the police</p> <p>10 academy at the time?</p> <p>11 A He was the head of the training</p> <p>12 borough.</p> <p>13 Q Training borough, so that would</p> <p>14 oversee the police academy?</p> <p>15 A Right.</p> <p>16 Q So, when you were developing this</p> <p>17 approach to the CIT training that was</p> <p>18 ultimately recommended --</p> <p>19 MR. MOORE: Withdraw that.</p> <p>20 Q You ultimately recommended, you, your</p> <p>21 group, recommended that the NYPD should get</p> <p>22 involved in the CIT training, correct?</p> <p>23 A Correct.</p> <p>24 Q So, in doing that, did you meet with</p> <p>25 members of the training division?</p>
<p style="text-align: right;">Page 19</p> <p>1 TOBIN</p> <p>2 what else were you doing in terms of your</p> <p>3 duties at this time with regard to CIT</p> <p>4 training?</p> <p>5 A That was it.</p> <p>6 Q Was there some recommendation that</p> <p>7 was made at some point by you or your staff to</p> <p>8 the police commissioner concerning CIT</p> <p>9 training?</p> <p>10 A Yes.</p> <p>11 Q How was that recommendation conveyed,</p> <p>12 was it in writing, was it orally or what?</p> <p>13 A I believe it was the Deputy</p> <p>14 Commissioner Suzanne Herman had a conversation</p> <p>15 with Police Commissioner Bill Braden at the</p> <p>16 time.</p> <p>17 Q Did you prepare any written materials</p> <p>18 for the police -- for the deputy commissioner</p> <p>19 or for the police commissioner summarizing</p> <p>20 what you had been doing with respect to CIT</p> <p>21 training pertaining to any recommendations?</p> <p>22 A I didn't, but I believe possibly</p> <p>23 training did.</p> <p>24 Q So, when you say training, you mean</p> <p>25 the training division of the --</p>	<p style="text-align: right;">Page 21</p> <p>1 TOBIN</p> <p>2 A Yes.</p> <p>3 Q How often did you meet with them and</p> <p>4 what was the nature of the interactions?</p> <p>5 A We looked at the training that was</p> <p>6 currently provided to the emergency service</p> <p>7 unit who gets the very in depth training in</p> <p>8 terms of working with EDP's and looked at</p> <p>9 modifying that curriculum for CIT.</p> <p>10 Q What else, anything else?</p> <p>11 A That was mainly the focus.</p> <p>12 Q Was there any change at this point, a</p> <p>13 recommended change, in the training that</p> <p>14 officers generally receive with regard to</p> <p>15 EDP's?</p> <p>16 A Not in terms of what they currently</p> <p>17 receive. This was to enhance by establishing</p> <p>18 CIT training.</p> <p>19 Q So, in terms of the policy that</p> <p>20 existed at the time in 2015, with respect to</p> <p>21 EDP's, I mean, the policy of New York City</p> <p>22 Police Department, that didn't change what</p> <p>23 changed was supplementing this with CIT</p> <p>24 training, correct?</p> <p>25 A Correct.</p>

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2 MR. LAX: The witness has a

3 clarification she wants to make in response to

4 the last question.

5 A So, this was in responding to 911

6 calls.

7 Q When you say this was, what do you

8 mean?

9 A The CIT training, when officers on

10 patrol were responding to 911 calls

11 regarding --

12 Q Does -- does -- go ahead.

13 A Regarding emotionally disturbed

14 persons.

15 Q Did the CIT training only focus on

16 responding to 911 calls?

17 A It was to supplement the training the

18 officers get when responding to 911 calls and

19 pick-up jobs.

20 Q Is that still the case, the CIT

21 crisis intervention teams are only activated

22 in response to 911 calls?

23 MR. LAX: Objection. You can answer.

24 A You are saying teams, this is people

25 on patrol.

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2 Q I am just trying to understand your

3 clarification.

4 A Uh-huh.

5 MR. MOORE: Maybe you can read her

6 clarification back to me.

7 (The record was read back by the

8 reporter.)

9 Thank you.

10 Q What --

11 MR. MOORE: Withdraw that.

12 Q Was there a retraining of all patrol

13 officers concerning the CIT training at some

14 point?

15 A No.

16 Q Has that ever been done since you

17 implemented CIT training?

18 A We are in the process of training

19 officers, which has continued. The class size

20 for CIT training is thirty at a max, so we've

21 increased it from one tour to three tours per

22 week.

23 Q Do you do the training at the police

24 academy?

25 A Correct, yes.

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1 TOBIN

2 Q You are not talking about recruit

3 training, you are talking in service training

4 for officers around the force, right?

5 A Yes.

6 Q In control training?

7 A In Operational command.

8 Q Okay, when you say operational

9 command, what do you mean?

10 A Housing and transit as well.

11 Q Would that include anticrime units?

12 A Yes.

13 Q Would it include officers or

14 individuals assigned to the detective

15 division?

16 A No.

17 Q So, is there -- at -- currently the

18 CIT training is not being given to members of

19 the detective division, correct?

20 A Correct.

21 Q And it hasn't been, since -- that has

22 been the case since January 2015, it hasn't

23 been given to them, correct?

24 A Correct.

25 Q Did you ever in your time in the

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1 TOBIN

2 police department work on developing

3 curriculum for how the police department

4 should respond to EDP's?

5 A No.

6 Q Did you ever teach any courses in the

7 company or either for recruits or in-service

8 with regard to how the -- how police officers

9 should respond to EDP's?

10 A No.

11 Q Whose currently the head of the

12 police academy?

13 A Theresa Shoretel is the assistant

14 chief in charge of the training borough and

15 Frederick Glover is the commanding officer of

16 the police academy.

17 Q So Theresa Shoretel is the deputy

18 commissioner for training?

19 A No. She's the chief of training.

20 Q Chief of training, I get the titles

21 all mixed up.

22 A No, it was -- it was -- they moved it

23 from a civilian position to a bureau. There

24 is no deputy commissioner, which Benjamin

25 Tucker was in 2014.

<p style="text-align: right;">Page 26</p> <p>1 TOBIN</p> <p>2 Q What is Theresa Shoretel's rank?</p> <p>3 A She's a bureau chief.</p> <p>4 Q She's a three star?</p> <p>5 A Three star, yep.</p> <p>6 Q I am going to hand you some patrol</p> <p>7 guide provisions.</p> <p>8 MR. MOORE: Can you mark this as</p> <p>9 Tobin Deposition Exhibit Number 1 and this as</p> <p>10 Tobin Deposition Number 2.</p> <p>11 (Documents marked as Tobin Exhibits 1</p> <p>12 and 2 for Identification, as of this date.)</p> <p>13 Q Let's look at Tobin Exhibit Number 2</p> <p>14 first. To your knowledge, is this the current</p> <p>15 patrol guide provisions with respect to</p> <p>16 mentally ill or emotionally disturbed persons?</p> <p>17 (Exhibit handed to witness.)</p> <p>18 A I think it's actually -- yes, it is.</p> <p>19 Q We are talking about Exhibit Number</p> <p>20 2, right?</p> <p>21 A Yes.</p> <p>22 Q Dated 11/28/18, correct?</p> <p>23 A Correct.</p> <p>24 Q Look at Tobin Exhibit Number 1. This</p> <p>25 is a patrol guide provision for the same</p>	<p style="text-align: right;">Page 28</p> <p>1 TOBIN</p> <p>2 the reports have changed to less lethal</p> <p>3 request -- there are two different reports.</p> <p>4 It appears that one of them is no longer</p> <p>5 utilized in the 2013 procedure.</p> <p>6 Q Which one is that?</p> <p>7 A It looks like the taser/stun device</p> <p>8 report is now called the use of conducted</p> <p>9 energy device, CED.</p> <p>10 Q Is that the only change you can see?</p> <p>11 A I haven't gone line-by-line.</p> <p>12 Q Let me ask you before you -- you</p> <p>13 agree with me that the numbered paragraphs of</p> <p>14 the patrol guide are the same as it was in</p> <p>15 2000 to 2013, right?</p> <p>16 A They have -- they both have, I</p> <p>17 believe, thirty-two steps.</p> <p>18 Q Right.</p> <p>19 A Whether they are the same or changed,</p> <p>20 I don't know.</p> <p>21 Q We won't go through each one, but so</p> <p>22 at least there were thirty-two paragraphs in</p> <p>23 the old policy and thirty-two numbered</p> <p>24 paragraphs in the new policy, correct?</p> <p>25 A Correct.</p>
<p style="text-align: right;">Page 27</p> <p>1 TOBIN</p> <p>2 subject matter dated on August 1, 2013,</p> <p>3 correct?</p> <p>4 (Exhibit handed to witness.)</p> <p>5 A Correct.</p> <p>6 Q To your knowledge, is this the patrol</p> <p>7 guide provision with respect to mentally ill</p> <p>8 or emotionally disturbed persons that was in</p> <p>9 effect in April of 2015?</p> <p>10 A Yes.</p> <p>11 MR. MOORE: Please mark this as</p> <p>12 Number 3.</p> <p>13 (Document marked as Tobin Exhibit 3 for</p> <p>14 Identification, as of this date.)</p> <p>15 Q I am handing you what has been marked</p> <p>16 as Tobin Exhibit Number 3.</p> <p>17 Can you identify this document?</p> <p>18 (Exhibit handed to witness.)</p> <p>19 A This is patrol guide procedure in</p> <p>20 effect as of January 1st of 2000.</p> <p>21 Q Do you know how the policy, the</p> <p>22 police department policy, with respect to</p> <p>23 mentally ill or mentally disturbed persons</p> <p>24 changed from January 2000 to August 2013?</p> <p>25 A Well, it should be -- it appears that</p>	<p style="text-align: right;">Page 29</p> <p>1 TOBIN</p> <p>2 Q What appears to have been changed is</p> <p>3 the language has been either added or removed</p> <p>4 from the section that begins additional data,</p> <p>5 correct?</p> <p>6 A Right.</p> <p>7 Q But the current policy -- not the</p> <p>8 current policy, the policy that would have</p> <p>9 been in effect in January -- in April of 2015</p> <p>10 would be contained in Tobin Exhibit Number 1,</p> <p>11 correct?</p> <p>12 A That's correct.</p> <p>13 Q So, in the period of time from 2000</p> <p>14 until 2013, the policy with respect to how</p> <p>15 officers should deal with people who have</p> <p>16 mentally ill or emotional problems the policy</p> <p>17 hasn't changed, right?</p> <p>18 A Since when?</p> <p>19 Q Between 2000 to 2013, there was no</p> <p>20 change in the policy, I am not talking about</p> <p>21 how it was implemented, I am talking about</p> <p>22 whether the policy set forth in the patrol</p> <p>23 guide had changed?</p> <p>24 A It had to. If there is two different</p> <p>25 patrol guides, one is revised.</p>

<p style="text-align: right;">Page 30</p> <p>1 TOBIN</p> <p>2 Q The one is revised with respect to</p> <p>3 about the policy contained and the number of</p> <p>4 paragraphs hasn't changed, correct?</p> <p>5 A I haven't gone through them, so, but</p> <p>6 there had to be some change in policy if we</p> <p>7 have a new patrol guide revision.</p> <p>8 Q Well, is it fair -- well, you can</p> <p>9 have a new patrol guide that has additional</p> <p>10 materials at the end of the numbered</p> <p>11 paragraphs but still the number of paragraphs</p> <p>12 would be the same?</p> <p>13 A Which appears to be the case here,</p> <p>14 but it doesn't mean the policy hasn't changed</p> <p>15 if there is more information and additional</p> <p>16 data.</p> <p>17 Q The new information may be generic</p> <p>18 described as policy it had changed in that</p> <p>19 respect, right?</p> <p>20 A Say that again, please.</p> <p>21 Q So, what you are suggesting is that</p> <p>22 to the extent there is additional information</p> <p>23 contained in the 2013 policy as compared to</p> <p>24 the 2000 policy, those additional changes you</p> <p>25 would describe as a change in policy, correct?</p>	<p style="text-align: right;">Page 32</p> <p>1 TOBIN</p> <p>2 you know back in 1992 or 1994 what the</p> <p>3 training was that police officers received</p> <p>4 with respect to EDP's?</p> <p>5 A I know it was given to recruit</p> <p>6 training. I think it was also given to people</p> <p>7 promoted during that time.</p> <p>8 Q When you say --</p> <p>9 A In collaboration with John Jay, I</p> <p>10 think they got a day of training with them.</p> <p>11 Q When you say people promoted, you</p> <p>12 mean --</p> <p>13 A Going from police officer to sergeant</p> <p>14 and I'm not sure it was sergeant to</p> <p>15 lieutenant.</p> <p>16 Q What about going from police officer</p> <p>17 to detective division?</p> <p>18 A No.</p> <p>19 Q Do you know what the extent of the</p> <p>20 training was in the academy at that time with</p> <p>21 respect to EDP's, and let's talk about, was it</p> <p>22 a half day, a class, was it a whole day?</p> <p>23 A That I don't know. I mean, that is</p> <p>24 very specific with training. I think it was</p> <p>25 also a thread through various topics, so let's</p>
<p style="text-align: right;">Page 31</p> <p>1 TOBIN</p> <p>2 A Correct.</p> <p>3 Q So, between 2000 and 2015, can you</p> <p>4 tell me if you know how the training provided</p> <p>5 to police officers has changed, if at all,</p> <p>6 with regard to mentally or emotionally</p> <p>7 disturbed persons?</p> <p>8 A I think the change that took place</p> <p>9 between 2000 and 2013 had to do with the stun</p> <p>10 gun, that appears to be the difference in the</p> <p>11 policy.</p> <p>12 Q Or the -- what do they call it</p> <p>13 conductive?</p> <p>14 A Energy device, CED.</p> <p>15 Q So, other than with respect to the</p> <p>16 use of the stun gun, can you tell me whether</p> <p>17 the training with respect to the stun gun can</p> <p>18 you tell me whether in any other respect the</p> <p>19 training with respect to EDP's has changed</p> <p>20 from 2000 to 2015 that you are aware of?</p> <p>21 A Not to my knowledge, but I'm not in</p> <p>22 training.</p> <p>23 MR. MOORE: Let's take a short break.</p> <p>24 (RECESS)</p> <p>25 Q So, Chief Tobin, can you tell me if</p>	<p style="text-align: right;">Page 33</p> <p>1 TOBIN</p> <p>2 say police communications and it would be</p> <p>3 communicating with X, Y and Z, which would</p> <p>4 have included emotionally disturbed.</p> <p>5 Q After leaving the academy in the</p> <p>6 middle '90's, when would an officer who wasn't</p> <p>7 promoted have received any kind of additional</p> <p>8 training with respect to EDP's?</p> <p>9 A After the mid-'90's?</p> <p>10 Q Yes.</p> <p>11 A If they were part of CIT training,</p> <p>12 I'm not sure. There may have been a component</p> <p>13 of command level training in which officers</p> <p>14 received roll call training or in tact</p> <p>15 training. I don't know what the subject of</p> <p>16 those were.</p> <p>17 Q CIT training didn't begin until 2015,</p> <p>18 right?</p> <p>19 A That's correct.</p> <p>20 Q So, from the mid-'90's until 2015 for</p> <p>21 an officer who wasn't promoted or an officer</p> <p>22 who was promoted into the detective division,</p> <p>23 there would have been no additional training</p> <p>24 on EDP's, correct?</p> <p>25 A No. I don't know that because we</p>

<p style="text-align: right;">Page 34</p> <p>1 TOBIN</p> <p>2 have -- there was in tact training and I don't</p> <p>3 know what those topics covered from the</p> <p>4 mid-'90's through 2015.</p> <p>5 Q Are you generally aware that in</p> <p>6 tact -- in tact is like in-service training,</p> <p>7 right?</p> <p>8 A Correct.</p> <p>9 Q Are you generally aware that EDP's</p> <p>10 was a subject matter covered by in tact</p> <p>11 training?</p> <p>12 A I'm not sure.</p> <p>13 Q So, you have no knowledge one way or</p> <p>14 the other as you sit here today, correct?</p> <p>15 A Correct.</p> <p>16 MR. MOORE: Why don't you mark this</p> <p>17 as Exhibit 4.</p> <p>18 (Document marked as Tobin Exhibit 4 for</p> <p>19 Identification, as of this date.)</p> <p>20 Q I handed you what has been marked as</p> <p>21 Tobin Exhibit 4.</p> <p>22 Can you identify this document?</p> <p>23 (Exhibit handed to witness.)</p> <p>24 A It's entitled Putting Training Into</p> <p>25 Practice A Review Of NYPD's Approach To</p>	<p style="text-align: right;">Page 36</p> <p>1 TOBIN</p> <p>2 A For this time period?</p> <p>3 Q Yes.</p> <p>4 A Yes, and I believe that it has</p> <p>5 significantly increased.</p> <p>6 Q So, when you say significantly</p> <p>7 increased, what do you mean?</p> <p>8 A I think the last number that was</p> <p>9 given, I don't know -- for 2018 might be as</p> <p>10 high as a hundred and eighty-one thousand</p> <p>11 calls.</p> <p>12 Q In terms of just the perspective,</p> <p>13 what percentage of police officer's work</p> <p>14 generally would be involved with people in</p> <p>15 mental crisis?</p> <p>16 A I think it's less then four percent.</p> <p>17 Q How much?</p> <p>18 A Less then four.</p> <p>19 Q Less then four percent?</p> <p>20 A Of calls.</p> <p>21 Q Of calls, right. But still a hundred</p> <p>22 and eighty thousand calls is a large number,</p> <p>23 correct?</p> <p>24 A It is, but I think we respond to four</p> <p>25 million and the hundred and eighty-one</p>
<p style="text-align: right;">Page 35</p> <p>1 TOBIN</p> <p>2 Handling Interactions With People In Mental</p> <p>3 Crisis.</p> <p>4 Q Have you seen this document before?</p> <p>5 A I have.</p> <p>6 Q When is the last time you looked at</p> <p>7 it?</p> <p>8 A Probably when it came out in 2017.</p> <p>9 Q Did you look at it in preparation for</p> <p>10 today's deposition by any chance?</p> <p>11 A I did not.</p> <p>12 Q If you turn to the first page of this</p> <p>13 document, which is -- I guess it is not Bates</p> <p>14 stamped, but it was attached to the summary</p> <p>15 judgment motion?</p> <p>16 MS. DROUBI: And the complaint.</p> <p>17 Q And the complaint too great.</p> <p>18 If you look at Page 1, you see on the</p> <p>19 bottom of the page it lists -- it refers to some</p> <p>20 statistics in the number of EDP calls the</p> <p>21 department receives every year?</p> <p>22 A Yes.</p> <p>23 Q I know you may not know exactly what</p> <p>24 the numbers are, but is that generally</p> <p>25 accurate as far as you understand?</p>	<p style="text-align: right;">Page 37</p> <p>1 TOBIN</p> <p>2 thousand doesn't mean that those were calls</p> <p>3 that officers respond to. I'm not sure, but I</p> <p>4 know that of the calls received at 911 for</p> <p>5 this job classification, it's less then four</p> <p>6 percent or just about four percent.</p> <p>7 Q Is there -- are those statistics</p> <p>8 available somewhere?</p> <p>9 A I just know because I asked</p> <p>10 communications for them.</p> <p>11 Q Setting aside the number of calls, do</p> <p>12 you know how many encounters officers engage</p> <p>13 in on a yearly basis that involve emotionally</p> <p>14 disturbed persons?</p> <p>15 A Off the top of my head, I don't.</p> <p>16 Q So, other than the CIT training, has</p> <p>17 there been any revision that you know of in</p> <p>18 the policy with respect to how police officers</p> <p>19 are to respond to EDP's as we sit here today?</p> <p>20 A I believe so. There was a new</p> <p>21 revision that came out to the patrol guide.</p> <p>22 Q In 2018?</p> <p>23 A Yes.</p> <p>24 Q How has that changed?</p> <p>25 A Without going through the thirty-two</p>

<p style="text-align: right;">Page 38</p> <p>1 TOBIN</p> <p>2 steps, I think it mostly had to do with</p> <p>3 technology, now that we all have the smart</p> <p>4 phones.</p> <p>5 Q Body one cameras?</p> <p>6 A Body one cameras, that type of</p> <p>7 information.</p> <p>8 Q So, can you just summarize, for me</p> <p>9 without referring to the documents, Chief</p> <p>10 Tobin, how officers are trained with respect</p> <p>11 to dealing with EDP's, what general principals</p> <p>12 are supposed to apply?</p> <p>13 A When they encounter someone who is a</p> <p>14 danger to themselves or others, they should</p> <p>15 isolate and contain, and request a patrol</p> <p>16 supervisor, and an emergency service unit.</p> <p>17 Q Anything else, any other general</p> <p>18 principals that you can think of?</p> <p>19 A Just ensure their safety and the</p> <p>20 person's safety as much as possible.</p> <p>21 Q Is it important for officers to</p> <p>22 develop as much information as they can about</p> <p>23 the incident from the beginning?</p> <p>24 A When they're responding to a 911</p> <p>25 call?</p>	<p style="text-align: right;">Page 40</p> <p>1 TOBIN</p> <p>2 also knew that he had engaged in an act of</p> <p>3 violence against the person he had robbed at</p> <p>4 least twice before they responded to the</p> <p>5 scene?</p> <p>6 MR. LAX: Objection. You can answer,</p> <p>7 if you understand.</p> <p>8 A That was part of the robbery, that he</p> <p>9 forcibly took someone's property and that he</p> <p>10 was violent.</p> <p>11 Q He physically harmed them?</p> <p>12 A Yes.</p> <p>13 Q You were aware of that too, right?</p> <p>14 A Yes.</p> <p>15 Q And were you aware that the -- do you</p> <p>16 understand in this case that these officers</p> <p>17 responded to a facility called The Bridge?</p> <p>18 A Yes.</p> <p>19 Q Are you aware that The Bridge is a</p> <p>20 facility that houses a residential facility</p> <p>21 for people with mental health issues?</p> <p>22 A Yes.</p> <p>23 Q Are you aware that when they</p> <p>24 responded to that facility and were buzzed in</p> <p>25 they talked to a security person at the desk</p>
<p style="text-align: right;">Page 39</p> <p>1 TOBIN</p> <p>2 Q Well, when they're responding to</p> <p>3 somebody who may present with emotional</p> <p>4 issues?</p> <p>5 A Yes.</p> <p>6 Q I mean, that's just basic good police</p> <p>7 work?</p> <p>8 A Common sense, yeah.</p> <p>9 Q I know it is kind of a simple</p> <p>10 question.</p> <p>11 A Okay.</p> <p>12 Q Are you aware of the facts of this</p> <p>13 case?</p> <p>14 A Somewhat.</p> <p>15 Q You're aware, are you not, that two</p> <p>16 detectives, Detective Matias and Detective</p> <p>17 Carter in April of 2015 went to a location in</p> <p>18 the East Village to try to arrest the</p> <p>19 plaintiff, David Felix, right?</p> <p>20 A Yes.</p> <p>21 Q Do you know what information they had</p> <p>22 in their possession before they went there?</p> <p>23 A I believe that they knew he was</p> <p>24 wanted for, I believe, a robbery.</p> <p>25 Q Right. And were you aware that they</p>	<p style="text-align: right;">Page 41</p> <p>1 TOBIN</p> <p>2 there and that person gave them some</p> <p>3 information about Mr. Felix, are you aware of</p> <p>4 that?</p> <p>5 A I believe the information they gave</p> <p>6 was that they didn't know whether he was home</p> <p>7 or not.</p> <p>8 Q Do you recall that -- do you</p> <p>9 understand in this case that the person who</p> <p>10 works at The Bridge indicated to these</p> <p>11 officers that he had a diagnosis as a paranoid</p> <p>12 schizophrenic?</p> <p>13 A They were told that?</p> <p>14 Q Yes.</p> <p>15 A Okay.</p> <p>16 Q Do you know that?</p> <p>17 A Not for a fact, but okay.</p> <p>18 Q Were you aware that they advised --</p> <p>19 that the person who worked for The Bridge had</p> <p>20 advised these officers that he took a</p> <p>21 medication called Abilify?</p> <p>22 MR. LAX: Objection. You can answer.</p> <p>23 A I believe it is one of the officer's</p> <p>24 testimony.</p> <p>25 Q Yeah.</p>

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2 A Okay, yeah.

3 Q So, you are aware of that fact too,

4 correct?

5 A Yes.

6 Q Were you aware that the officers were

7 shown a log which would have indicated whether

8 Mr. Felix had taken his medication?

9 MR. LAX: Objection. You can answer.

10 A I don't recall seeing that, no.

11 Q So, based upon your -- on your

12 understanding of the NYPD's policies and

13 practices with respect to EDP's, what should

14 the officers have done in this circumstance

15 who they were on -- they were looking for

16 somebody who had committed a violent felony,

17 had assaulted somebody, they come to a

18 facility that's a residential facility for

19 people with mental health issues, they learn

20 that he was -- he had a diagnosis as a

21 paranoid schizophrenic and they learned he was

22 on a medication called Abilify, and they had

23 made efforts to contact him, and they were

24 unsuccessful, so they didn't really know if he

25 was there or not, what should they have done

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2 in that circumstance?

3 MR. LAX: Objection. You can answer.

4 A Pursue whether he was at the

5 location.

6 Q I am sorry.

7 A Pursue whether he was at the

8 location.

9 Q So, what -- should there have been

10 anything they should have done considering

11 what they learned about his mental health

12 condition?

13 A No.

14 Q Why not?

15 A Because they didn't know whether he

16 was there and whether that condition was being

17 manifested.

18 Q Well, they knew what the diagnosis

19 was, they knew he was taking a medication and

20 arguably they knew he hadn't taken his

21 medication because he hadn't been there for

22 two days, so under those circumstances,

23 shouldn't they have been required to call a

24 supervisor and call a bus?

25 MR. LAX: Objection. You can answer.

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2 A No.

3 Q Why not?

4 A Because they had not located him to

5 see if his diagnosis was evident.

6 Q But they didn't know whether he was

7 in the apartment or not?

8 A Right.

9 Q So, but they then were able to get

10 the building to let them in the apartment,

11 correct?

12 MR. LAX: Objection.

13 Q Were you aware of that fact?

14 MR. LAX: Objection.

15 A I think it was a statement of the

16 officers that they did.

17 Q Yeah, so with that, in your judgment

18 in terms of dealing with somebody who has

19 emotional, mental health issues, was that a

20 proper police practice to go into the

21 apartment not knowing whether he was there or

22 not?

23 MR. LAX: Objection. You can answer.

24 A Yes.

25 Q That was proper?

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2 A Yes.

3 Q At what point would the procedures

4 with respect to dealing with an emotional

5 disturbed person have been triggered in this

6 circumstance?

7 A If they had seen the person they were

8 looking for displaying behavior that would

9 have been harmful to himself or others.

10 Q So, if they knew he was in the

11 apartment and they knew that he had this

12 condition and he was taking medication, he had

13 engaged in some violent felonies just a couple

14 of days earlier, is it your testimony that the

15 NYPD policy and practice under the current --

16 the then current NYPD practice, it would have

17 been okay for them to go into his apartment?

18 A Correct.

19 Q Even though going into the apartment

20 might have triggered some unusual conduct on

21 his part?

22 MR. LAX: Objection. You can answer.

23 A I don't know if they would have known

24 that without entering the apartment. They

25 didn't even know if he was there, is my

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2 understanding.

3 Q Right, but the question is, it is

4 really judgment, I guess I'm asking you as a

5 matter of policy and practice to make a

6 judgment about whether the officers acted

7 properly by going into his apartment knowing

8 what they knew about him, not knowing whether

9 he was there or not, but if he was there that

10 might have provoked a dramatic and fatal

11 confrontation right at the spot, it is your

12 testimony that would be proper?

13 MR. LAX: Objection. You can answer.

14 A Yes.

15 Q Do you know that the officers or were

16 investigated by the police department for this

17 shooting that occurred?

18 A Do I know that the police

19 department --

20 MR. MOORE: Withdraw that. Withdraw

21 that.

22 Q You know at some point shortly after

23 they went into his apartment and they

24 confronted him down in the lobby that

25 Mr. Felix was shot and killed by one of the

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2 officers, correct?

3 A Yes.

4 Q Are you aware that an investigation

5 was done of that shooting?

6 A I'm aware that we investigate every

7 police shooting, so I'm assuming, yes.

8 Q Do you know whether as a result of

9 that investigation the officers were ordered

10 to be retrained?

11 A I don't.

12 Q Can you think of any reason why they

13 would be asked -- they would be ordered to be

14 retrained?

15 MR. LAX: Objection. You can answer.

16 A I don't.

17 Q So, as a matter of policy and

18 practice from the perspective of the police

19 department, and you are speaking for the

20 police department now, it is your testimony

21 that knowing those facts that I laid out, that

22 Mr. Felix had engaged in a robbery and a

23 violent assault of somebody just a couple of

24 days earlier, that he was living in a mental

25 health facility, that he was -- that they knew

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2 he had a diagnosis as a paranoid schizophrenic

3 and they knew he was taking a medication to

4 treat that, and they may or may not have

5 known, it is unclear, but they certainly saw

6 the book showing whether he had taken his

7 medication or not, under that set of

8 circumstances, you are saying it was proper

9 for the officers to go ahead and break into

10 the apartment and not wait for a sergeant or

11 ESU to come to the scene?

12 MR. LAX: Objection. You can answer.

13 A Okay. Can I just pause here. I'm

14 not understanding what the objections are and

15 then answer.

16 MR. LAX: Sorry, I am objecting to

17 form, but you still have to answer.

18 Q Unless he directs you not to answer,

19 you have to go ahead and answer.

20 MR. LAX: Sorry about that.

21 Q I should have explained that to you

22 too, so I apologize.

23 A I am not sure the facts as you are

24 laying them out are true.

25 Q In that set of facts, though, are you

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2 saying --

3 A I don't think they broke into the

4 apartment, is my understanding, but they went

5 up to his room.

6 Q Change it to they were able to get

7 into his apartment. Under that set of facts,

8 you are saying based upon your understanding

9 of the policy and practice of the police

10 department, it was proper for them to have

11 done that and not have called a supervisor or

12 called ESU?

13 A Correct.

14 Q That is based on what?

15 A Our current policy.

16 Q Your understanding of the policy and

17 practice?

18 A Correct.

19 MR. MOORE: Let me take a short

20 break.

21 (RECESS)

22 Please mark this.

23 (Document marked as Tobin Exhibit 5 for

24 Identification, as of this date.)

25 Q Chief, I am handing you what has been